

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee
Fidelity Advisory Committee

FROM: Lenore S. Marema, Vice President-Government Affairs

DATE: June 26, 2007

SUBJECT: 2007 State Legislative Sessions—Fidelity

At this point in the state sessions, it is easier to list the states still in their regular 2007 session, as most states have adjourned for the year. California, the District of Columbia, Delaware, Illinois, Louisiana, Massachusetts, Michigan, North Carolina, New Hampshire, Ohio, Oregon, Pennsylvania and Wisconsin are still in session. New Jersey and New York are in recess, and South Carolina is in its veto session.

The following summarizes key state legislation affecting fidelity that SFAA most recently has been working on with AIA. This report updates the May 2007 overview report, which SFAA members can access on the SFAA website for reference.

Bad Faith

The trial lawyers resurrected their bad faith agenda in states that experienced a turnover in leadership as a result of the November 2006 elections.

Rhode Island SB 192 would permit any obligee, principal or claimant under a payment or performance bond to bring an action against the surety when it is alleged that the surety wrongfully and in bad faith refused to pay or settle a claim or refused to perform its obligations under the bond. Compensatory and punitive damages are permitted, as well as reasonable attorneys' fees. The bill passed the Senate but was heard and held again in the House Judiciary Committee. The House Committee previously heard and held the companion bill, HB 5120. The legislature is adjourned and the bill is dead for this year.

The insurance industry and business community are working on a dual track to reverse **Washington** SB 5726, which likely has the lowest standard for bad faith in the country. The coalition currently is seeking signatures to qualify for a referendum that would put the issue on the ballot for the voters to overturn in the November elections. In the meantime, the industry is working on a Governor's task force to see if corrective language can be worked out for the 2008 session. The Governor is a trial lawyer and was one of the lead attorneys on the tobacco litigation. She does, however, have the following concerns with the new law: 1) a clear bad faith standard is needed; 2) punitive damages are unlimited and 3) health insurers are exempt. Even if the Governor's task force can agree on meaningful corrective legislation, there is no guarantee

that it will pass in 2008. By mid-July, the industry will be able to gauge whether corrective legislation is realistic or whether the referendum is the only real avenue to further address this new law.

--Defeated. A business and industry coalition turned the tide in **Minnesota**, and bad faith legislation was defeated before the session adjourned. The House and Senate passed different bad faith bills, but the industry continued with an extraordinary lobbying and public relations effort and neither bill passed before the session adjourned.

New Hampshire Senate Bill 188 is dead for the year. The Senate version of the bill would have subjected an insurer to the consumer protection law if a court of competent jurisdiction found that the insurer engaged in unfair claims settlement practices and would have allowed a third party to bring a direct action against an insurer for an unfair claims settlement practice, independent of any actions taken by the Commissioner. The House amended the bill by substituting provisions that would have increased the penalties for violation of the unfair claims practices law from \$2,500 to up to \$25,000 for each violation. The Senate did not concur with the House amendment, and the bill went to conference where it died when the conferees failed to reach an agreement by the June 19 deadline.

UPDATE ON FIDELITY ISSUES IN THE STATES

Condo Associations

Hawaii SB 1704 would permit a community association unable to obtain the required fidelity bond to apply to the Real Estate Commission for an exemption, deductible or bond alternative. Existing law requires associations with five or more units to post a fidelity bond in the amount of \$500 multiplied by the number of units, but not less than \$20,000 and not more than \$200,000. SB 1704 remains on the Governor's desk for signature. **Illinois** HB 1071 would require managers of community associations to be licensed and bonded. A fidelity bond would be required in an amount not less than all the funds of the association and must cover the manager and all partners and employees of the firm in which the manager is employed. The bill now has passed both House in Illinois.

OTHER RECENT ENACTMENTS

Georgia HB 477 enacts a charter for the City of Richland and requires that city officers and employees post a surety or fidelity bond in an amount and with terms and conditions that the city council requires.

Iowa SB 557 requires the new Superintendent of Credit Unions to post a bond and requires state credit unions to obtain fidelity bonds for credit union employees and officials in an amount sufficient to indemnify the credit union for losses caused by fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misappropriation, misapplication or any other wrongful act of the employees or officials.

Iowa SB 559 requires the sellers of pre-need funeral contracts to post a \$50,000 fidelity bond or insurance policy, which must remain in place for one year after the ownership of the business is

sold or transferred. The new law also contains notices to the consumer that must be on the bond or insurance.

North Carolina SB 772 changes the amount of the fidelity bond required from school finance officers. Under prior law, the board of education would fix the bond amount at not less than \$10,000 and not more than \$250,000. The new law provides that the bond will be not less than \$50,000 and does not set a maximum amount on the bond.

Nevada SB 476 re-designates intermediaries as exchange facilitators and changes their license bond from a surety bond to a fidelity bond. The new law requires a fidelity bond in an amount not less than a \$1 million from an insurer licensed in the State.

Texas HB 4015 creates economic development zones and requires members of a zone's board to post a \$10,000 fidelity bond to secure faithful performance of their duties. HB 4085 would do the same for board members of the Triple Creek Municipal Management District.

BILLS ON THE MOVE

California SB 972 would allow California mutual benefit corporations to form multiple employer welfare arrangements (MEWAs). The law currently permits MEWAs and requires a fidelity bond in the amount of 10% of the funds that the MEWA handles. The new association MEWAs would be required to post a fidelity bond in an amount equal to the funds that will be handled annually.

Missouri HB 426 would create the Propane Safety Commission and permit the Chairman of the Commission to obtain a blanket bond covering all members of the Commission and the employees in lieu of individual bonds. The bill is on the Governor's desk for signature.

New Hampshire HB 256 would require officials and employees to whom the town treasurer delegates certain treasury functions to be covered under the town's blanket bond. The bill has passed the House. The Senate amended the bill, which did not affect the surety bond provision. The bill still awaits the Governor's signature.

Oregon SB 350 would authorize the Director of the Economic and Community Development Department to require officers and employees to obtain a fidelity bond if they have charge of, handle or have access to any state money or property. The Director would set the amount of the bond. The bill is moving through committees in the Senate.

RECENT INTRODUCTIONS

California SB 1007 would license and regulate exchange facilitators, which are those who facilitate like-kind exchanges of property pursuant to federal tax law. The bill would require such persons to be licensed and obtain a fidelity bond in an amount not less than \$1 million or post cash, securities or a letter of credit in an equal amount. The Corporation Commissioner would be permitted to waive the requirement if the bond was not commercially or reasonably available.

New York AB 8635/SB 4887 would enact a new city charter for Wellsville and would require all city officers and employees to provide a fidelity bond for the faithful performance of their duties if they have possession or control over any funds of the city.